



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

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JUN 15 1988

James L. Patton, Jr., Esquire
Young, Conaway, Stargatt & Taylor
Eleventh Floor
Rodney Square North
P.O. Box 391
Wilmington, Delaware 19899-0391

Re: Metro Container Site
Trainer, Pennsylvania
Superfund Site

Dear Jim:

Enclosed as we have discussed is a revised draft of the Metro Container CERCLA §106 removal consent order for the Metro Container Site in Trainer, Delaware. In reviewing this draft I have concluded that both Metro Container and Metro Enterprises Container should execute the order. Accordingly, appropriate changes should be made at the time a final draft is prepared for signature. I also wish to advise you that all consent orders are subject to the final review of the Regional Counsel and the Director of the Hazardous Waste Management Division.

I suggest that you call me (215/597-8905) on Monday, June 20 so that we can schedule a meeting to resolve any issues that may be outstanding in the negotiation of the order.

Sincerely yours,

Diane Ajl
Assistant Regional Counsel

Enclosure
cc (w/ encl.): Larry Falkin

Region III

JUN 15 1988

In the Matter of:)

Metro Container Corporation Site)

Metro Container Corporation)
Respondent)

Docket No: _____

Proceeding under Section 106(a) of the)
Comprehensive Environmental Response,)
Compensation, and Liability Act of 1980)
(42 U.S.C. § 9606(a), as amended by the)
Superfund Amendments and Reauthorization)
Act of 1986, Pub. L. No. 99-449, 100)
Stat. 1613 (1986).)CONSENT AGREEMENT AND ORDER

The following Consent Agreement and Order ("Order") by and between the United States Environmental Protection Agency ("EPA") and the Metro Container Corporation ("Respondent") is issued pursuant to the authority vested in the President of the United States of America by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, ("SARA") Pub. L. No. 99-499, 100 Stat. 1613 (1986) and delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 19 (1987), and further delegated to the Regional Administrators of EPA. This Order pertains to a property more particularly described below, located in Trainer, Delaware County, Pennsylvania.

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The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 C.F.R. § 300.65. Notice of the issuance of this Order has been given to the Commonwealth of Pennsylvania pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

This Order shall apply to and be binding upon the parties and their respective agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for the parties.

I. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate, and/or eliminate the release or threat of release of hazardous substances at the Metro Container Corporation Site ("Site").

The specific purpose of this Order is to control access to the Site, prevent further releases of hazardous substances, and prevent further migration of hazardous substances into Stoney Creek. Both parties anticipate that removal activities beyond the scope of this Order may be necessary and may be the subject of future negotiations.

II. FINDINGS OF FACT

EPA has determined that:

1. The Metro Container Corporation ("Metro") site is located at West Second Street and Price Road in Trainer, Delaware County, Pennsylvania.

2. The Site, located in an industrial area, is bounded by an oil refinery to the west and a scrap yard to the east with railroad lines and the Delaware River to the south and residences to the north. Stoney Creek, a tributary to the Delaware River, borders the western edge of the Site.
3. The Site has been used for approximately 20 years as a recycling and reclaiming facility for used drums. Metro became the owner and operator of the Site on February 11, 1983.
4. The Site operation consisted of receiving empty drums, as defined at 40 C.F.R. § 261.7, cleaning and reconditioning them, and selling them. According to Metro, wastes from the drum cleaning process were either incinerated on site or routed through an on-site sludge treatment process. The incinerator ash was shipped to an off-site disposal facility. Some of the treated sludge was discharged to the local sewage system under agreement with the local sewer authority. The remainder of the sludge was shipped to an off-site disposal facility.
5. In or around June, 1987, Metro ceased using its sludge treatment system because it became non-functional. At that time, sludge began accumulating at the Site. The sludge was stored in an open lagoon and in used drums that had been sent to the Site for reclamation.
6. In early November, 1987, Metro cut back its operations by approximately 50% because it was unable to manage the sludge buildup.
7. On December 7, 1987, Metro filed for bankruptcy under Chapter 11 of the Bankruptcy Code. Metro ceased operations on December 11, 1987.

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8. EPA employees and contractors conducted an inspection of the Site on December 11, 1987. The inspection revealed an open cement lagoon containing waste sludge (approximately 1300 gallons), 500 to 1000 55-gallon drums of waste sludge, and approximately 60,000 unreclaimed drums. The lagoon was filled beyond capacity and was on the verge of overtopping its banks. Visual evidence was present that the lagoon had, in the past, overtopped its banks. Many of the drums containing sludge were in poor condition, were uncovered, and appeared partially filled with rainwater. Sludge was also present on the ground in the vicinity of the sludge storage drums.

9. Samples were taken during the December 11, 1987, inspection. The sample locations are shown on the map in Appendix 1 which is attached hereto and made a part hereof. The results of the sampling are shown in the tables in Appendix 2 which are attached hereto and made a part hereof.

10. The substances listed in Appendix 2 are hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

11. The toxicological effects of the hazardous substances listed in Appendix 2 are presented in Appendix 3, attached hereto and made a part hereof.

12. The Site is not completely fenced and no 24-hour security system is in place.

III. CONCLUSIONS OF LAW

13. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

15. Hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) have been disposed of at the Site and are currently present there.

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16. The past, present, and/or potential migration of hazardous substances at and/or from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

17. Respondent is liable as a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

IV. DETERMINATION

18. Based upon the Findings of Fact and Conclusions of Law, the EPA Regional Administrator for Region III has determined that there may be an imminent and substantial endangerment to the public health, welfare, or the environment as a result of the release or threat of release of hazardous substances at and/or from the Site.

19. The Regional Administrator has determined that the actions set forth below must be taken to protect public health and welfare and the environment.

V. WORK TO BE PERFORMED

20. "Days" as used in this Order shall mean calendar days unless otherwise specified.

21. Within seven (7) days of the effective date of this Order, Respondent shall complete the following measures:

a. Implement Site security sufficient to prevent accidental or unknowing entry to the Site by the public.

b. Retain a qualified contractor or identify qualified employees who will develop and implement the Work Plan described

below in paragraph 21 and notify EPA in writing regarding the identity and qualifications of the person or persons who will be primarily responsible for carrying out the terms of this Order.

EPA may disapprove the use of any supervisory personnel, contractor and/or subcontractor if EPA believes they are not qualified to perform the response work. In the event of a disapproval, Respondent shall notify EPA within seven (7) days of the person, contractor or subcontractor who will replace the one(s) whom EPA disapproved. EPA may not unreasonably withhold this approval.

c. Take any actions necessary to immediately stop any ongoing leaks or releases of hazardous substances and ensure that no further releases occur prior to the implementation of the Work Plan required below.

21. Within twenty-one (21) days of the effective date of this Order, Respondent shall submit to EPA a Work Plan which:

a. when implemented, permanently eliminates the release and threat of release of hazardous substances from the Site.

b. when implemented, prevents the migration of hazardous substances to and into Stoney Creek.

c. contains a site safety program which is sufficient to minimize the potential for exposure of personnel and the public to hazardous substances during performance of the work specified therein.

d. contains a schedule for the implementation of all tasks specified in the Work Plan. This schedule shall not exceed 60 days for the achievement of the above objectives.

e. provides for EPA to receive notice at least 72 hours prior to the commencement of any activities related to this Order.

22. EPA shall review the Work Plan submitted pursuant to paragraph 21. If EPA approves the Work Plan, Respondent shall begin implementation of the Work Plan within 5 days of notification by EPA of its approval. If EPA disapproves or conditionally approves the Work Plan, EPA will specify the deficiencies or conditions in writing. Respondent shall, within 7 days following receipt of a conditional approval, modify the Work Plan to satisfy the conditions and begin implementing the Work Plan as modified. Respondent shall, within 7 days following receipt of a disapproval, modify the Work Plan to remedy the specified deficiencies and resubmit the Plan to EPA. In the event of disapproval of the revised Plan, EPA retains the right to submit its own plan to the Respondent and to require the Respondent to perform the tasks set forth therein, or to perform the work itself and to seek to recover costs from the Respondent for such work pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

23. Respondent shall report to EPA on a regular schedule which shall be specified in the Work Plan and shall provide the dates that each task was initiated and completed, as well as all information developed and sample results obtained. Respondent shall provide any information related to the Site cleanup specifically requested by EPA within 72 hours of receipt of the request. Within 45 days after completing the

work required by this Order, the Respondent shall submit a final report detailing activities completed and data gathered.

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24. Respondent and EPA or their designees shall arrange a final inspection of the Site following completion of the measures described above to verify compliance with the requirements of this Order. EPA shall subsequently notify Respondent of its determination of satisfactory compliance with the terms of the Order, or in the event that EPA determines that compliance is not satisfactory, EPA shall specify the deficiencies and the necessary corrective actions. In the event that EPA determines that compliance is not satisfactory, the Respondent will undertake and complete the necessary corrective actions within fourteen (14) days of receipt of EPA's notice of disapproval.

25. No change in ownership or corporate or partnership status relating to the Site will in any way alter the responsibility of the Respondent under this Order. In the event of any change in ownership or control of the Site, Respondent shall notify the EPA in writing at least thirty (30) days in advance of such change and shall provide a copy of this Order to any successor in interest or anyone who may obtain any right or title in interest in the Site prior to any agreement for change in ownership or control.

26. Respondent shall comply with all applicable Federal, State, and local government statutes, regulations, and ordinances when carrying out activities pursuant to this Order.

27. Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants retained to conduct any portion of the work performed pursuant to this Order.

28. All work must be performed in accordance with the Occupational Safety and Health Administration's rules and regulations governing hazardous waste operations, 29 C.F.R. Part 1910.

VI. DESIGNATED PROJECT OFFICERS

29. On or before the effective date of this Consent Order, EPA and Respondent shall each designate a Project Officer ("PO"). Each PO shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Respondent and EPA and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the Project Officers. EPA and Respondent each have the right to change their respective PO. Such a change shall be accomplished by notifying the other party in writing at least five (5) days prior to the change. The EPA PO's authority shall include the authority to halt, modify, conduct, or direct any tasks required by this Consent Order or portions thereof or to take any response actions when conditions present an immediate risk to public health or welfare or the environment as described in 40 C.F.R. § 300.65 due to noncompliance with the requirements of this Order, unsafe working conditions or improper work practices, or any changed or unanticipated problems, conditions, or events. The PO's actions shall, at all times,

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be controlled by the guidance and authority of the National Contingency Plan, 40 C.F.R. Part 300. The PO for EPA shall be:

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Lawrence Falkin, Compliance Officer
United States Environmental Protection Agency
CERCLA Removal Enforcement Section (3HW14)
841 Chestnut Building, 6th Floor
Philadelphia, PA 19107
Telephone: (215) 597-6679.

The absence of the EPA PO from the Site shall not be a cause for the stoppage of work.

VII. SAMPLING AND ACCESS

29. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by Respondent pursuant to the implementation of this Order. Respondent shall notify EPA not less than seventy-two (72) hours in advance of any sample collection activity.

30. In addition to its authority under Section 104 of CERCLA, 42 U.S.C. § 9604, EPA and its authorized representatives shall have the authority to enter and freely move about the Site at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; conducting such sampling and tests as EPA deems necessary; and verifying the data submitted to EPA by Respondent. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which in any way pertains to work undertaken pursuant

to this Order, provided however, that nothing herein shall constitute a waiver of documents protected by the attorney-client privilege or the attorney work-product doctrine.

EPA reserves such rights as it may have to seek access to such documents and if Respondent withholds such documents it shall provide to EPA an index of the documents withheld and a statement supporting the claim of privilege or work-product. All parties with access to the Site pursuant to this paragraph shall comply with all approved health and safety plans. To the extent that property included in the sampling and removal area is owned or controlled by parties other than the Respondent, the Respondent will use all reasonable efforts to obtain access agreements from the present owners within twenty (20) days of the effective date of this Order. Such agreements shall provide reasonable access for EPA, Respondent, and their representatives. In the event Respondent cannot obtain such access agreements within the time designated above, EPA shall be notified immediately in which case EPA shall further consider the appropriate means of gaining access.

VIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

31. The effective date of this Order shall be the date on which it is signed by EPA.

32. This Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall become effective on the date on which such amendments are signed by EPA. Minor changes to the Work Plan and schedule may be made by mutual agreement of the EPA's and Respondent's POs. Such changes shall become effective at the time of agreement

and shall be confirmed by EPA within 5 days by letter.

33. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order, with the exception of site access agreements between the Respondent and third parties, are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section X "Stipulated Penalties".

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34. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and other writing(s) submitted by the Respondent may be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Order.

IX. QUALITY ASSURANCE

35. The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/86, while conducting all sample collection and analysis activities required by this Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan.

X. FORCE MAJEURE

36. The Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with the requirements of this Order. Said notification shall be made verbally as soon as possible but not later than two (2) business days after Respondent becomes aware of such delay or anticipated delay, and in writing not later than five (5) calendar days after becoming aware of such delay or anticipated delay. The written notification shall state: (1) the nature of the delay; (2) whether and the reason why the delay is beyond the control of the Respondent; (3) the action that will be taken to mitigate, prevent or minimize further delay; (4) the anticipated length of the delay; and (5) a timetable for the action to mitigate, prevent or minimize the delay. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

Any delay that results from circumstances beyond the control of the Respondent that cannot be overcome by due diligence shall not be deemed to be a violation of the Respondent's obligations under this Order; nor shall it make the Respondent liable for penalties pursuant to this Order resulting from such a delay. To the extent a delay is caused by circumstances beyond the control of the Respondent, the schedule affected by the delay shall be modified to account for the delay resulting from such circumstances. Increased costs of performance or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

Failure of the Respondent to comply with the notice requirements of this Section shall render this Section void and constitute a waiver of the Respondent's right to invoke the benefits of this Section. ORIGINAL (Red)

In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Order has been or will be caused by circumstances beyond the reasonable control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section, Section XI, of this Order. The Respondent shall have the burden of proving that the delay was caused by circumstances beyond its control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all measures to avoid or minimize delay. CBI

XI. DISPUTE RESOLUTION

37. If the Respondent objects to any EPA notification of deficiency, disapproval, or other EPA action taken pursuant to this Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of such notification or action. EPA and the Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection from the Respondent to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent.

XII. STIPULATED PENALTIES

38. If Respondent fails to perform any work or submit any reports as set forth in the Work Plan, in accordance with the schedule contained therein, Respondent shall pay into the Hazardous Substances Superfund, within thirty (30) calendar days of demand, the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substances Superfund and should be mailed to:

EPA - Superfund
P.O. Box 371003M
Pittsburgh, PA 15251

A copy of the check and transmittal letter shall be sent to the EPA PO. Stipulated penalties shall accrue in the amount of \$1,000 per day for the first week or any portion thereof, \$2,000 per day for the next three (3) weeks thereafter or any portion thereof and \$5,000 per day for each week thereafter or any portion thereof. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions available to EPA by reason of the Respondent's failure to comply with any of the requirements of this Order. The collection of stipulated penalties is stayed during the pendency of Dispute Resolution under Section XI hereof, except that said penalties shall continue to accrue during this period of time. Upon conclusion of the Dispute Resolution procedures set forth under Section XI, payment of all accrued stipulated penalties shall be due within fourteen (14) calendar days of Respondent's receipt of EPA's written decision.

XII. STATUTORY PENALTIES

39. Respondent is advised that willful violation or failure or refusal to comply with this Order, or any portion hereof, may subject the Respondent to a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues, in accordance with Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Failure to comply with the Order, or any portion thereof, without sufficient cause, may also subject Respondent to liability for punitive damages in an amount of up to three times the amount of any costs incurred by the Fund, as defined in Section 101(11) of CERCLA, 42 U.S.C. § 9601(11), as a result of such failure to take proper action, in accordance with Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

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40. Except as expressly provided in this Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, and imposition of statutory penalties.

41. As provided by this Order, EPA expressly reserves its right to disapprove of work performed by the Respondent and reserves its right to request that the Respondent perform response actions in addition to those required by this Order, if it determines that such actions are necessary. In the event that the Respondent declines to perform such additional actions, EPA reserves the right to undertake such actions and

seek reimbursement for costs incurred pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and seek reimbursement for any costs incurred pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

XV. OTHER CLAIMS

42. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

43. The Respondent hereby waives any claim to reimbursement it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

44. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XVI. CONSENT

45. The Respondent agrees to undertake all actions required by the terms and conditions of this Order, but does not otherwise commit to undertake any other action hereby. The Respondent consents to and will not contest EPA jurisdiction regarding this Order.

XV. REIMBURSEMENT OF COSTS

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46. At the termination of this Consent Order, EPA shall submit to the Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs incurred by EPA, its agents or contractors in connection with EPA's oversight of the work to be done by the Respondent under the terms of this Consent Order. The Respondent shall, within thirty (30) calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the Hazardous Substances Response Superfund. Checks should specifically reference the Site and be addressed as specified in Section XII of this Order.

XVII. TERMINATION AND SATISFACTION

47. The provisions of this Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that to the satisfaction of EPA, which approval shall not be unreasonably withheld, all of the terms of this Order have been adequately completed.

The undersigned representative of the Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this Order, to execute this Order, and to legally bind the Respondent to this Order. This Order will become effective upon signature by the Regional Administrator.

XVIII. ADMISSIONS

47. Nothing in this Consent Order, including the Work Plan

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identified in Section V hereof, is intended by the parties to be, nor shall it be, an admission of facts or law or determinations, an estoppel, or a waiver of defenses by the Respondent for any purpose, other than the enforcement of this Consent Order, and Respondent specifically does not admit any matter of fact or law set forth herein including that the conditions at the Metro Container Site present an imminent and substantial endangerment to public health, welfare, or the environment, or that such conditions constitute a release or threat of a release of hazardous substances. Participation in this Consent Order by the Respondent is not intended by the parties to be, and shall not be, an admission of any fact or opinion developed by the contractor in the completion of the work. The terms of this Consent Order, including the Work Plan, shall not be construed more or less favorably for or against any party hereto. This Consent Order shall not be admissible in any proceeding except to enforce the terms of this Order.

IT IS SO AGREED AND ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: _____

BY: _____
JAMES M. SEIF
REGIONAL ADMINISTRATOR
EPA, REGION III

RESPONDENT

DATE: _____

BY: _____
Name (Signed)

Name (Print or Type)

Title